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Comments and Casenotes

THE MARYLAND CLASSIFIED INCOME TAX OF 1939[1]

By CALEB R. KELLY, JR.*

The question whether the Maryland Income Tax Act of 1939[2] shall be radically modified appears likely to rank as one of the most important items on the agenda of the 1941 Session of the General Assembly. Few statutes have been more sharply criticized,[3] and yet those responsible for

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[1] Articles appearing in prior issues of the Maryland Law Review have discussed in detail various phases of Maryland income tax law. Thus, the history of income taxation in Maryland and the constitutionality of the "flat" income tax (imposed by Chapter 11 of the Acts of the 1937 Special Session of the Maryland Legislature) were considered in Cairns, *History and Constitutionality of the Maryland Income Tax Law* (1937) 2 Md. L. Rev. 1. The same issue contained a survey of the "flat" income tax law, Carter, *A Survey of the Maryland Income Tax Law* (1938) 2 Md. L. Rev. 11. The taxation of Maryland ground rents was fully considered in Lewis, *The Taxation of Maryland Ground Rents* (1939) 3 Md. L. Rev. 314. Several sections of that article were devoted to a discussion of the effect of the 1939 Classified Income Tax on ground rents.

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[2] Md. Code (1939) Art. 81, Secs. 222-258, enacted by Md. Laws 1939, Ch. 277.

[3] The criticisms leveled at this taxing statute may be conveniently divided into two categories:

First, it is contended that the voters of the State rejected the income tax as a means of raising State revenue when, in November, 1938, they refused to approve an Amendment to Article 15 of the Declaration of Rights of the Constitution of Maryland (submitted to the voters of the State under Chapter 525 of the 1937 Acts of the Maryland Legislature) which would have added to that Article the following provision:

> "Taxes may be imposed on incomes, which may be classified, graduated and progressive and the exemption of a reasonable amount of income from taxation may be provided and such taxes may be in lieu of taxes on any class or classes of real or personal property as the General Assembly may determine."

It is further contended that the enactment of any new form of income tax in direct opposition to the expressed will of the voters cannot, under any circumstances, be justified, and that the enactment of an income tax under such circumstances constituted a violent transgression of democratic principles. The Commission on Taxation and Revenue (commonly known as the Rawls Commission because it was headed by William Lee Rawls), although it was the originator of the Classified Income Tax for Maryland, recognized this objection to the enactment of a new form of income tax (page 4 of the Report of the Commission, dated January 25th, 1939):

> "The point was raised at the outset that reasons of expediency should dictate the abandonment of this revenue source, because of the adverse vote upon the proposed constitutional amendment (Ch. 525, Acts of 1937). The vote may be explained by the fear on the part of taxpayers that a favorable vote might have brought about the

the form of the levy are warm in their praise of it, and are confident that they have established a permanent form of taxation for the State of Maryland.[4] It is admitted even by this group, however, that certain modifications are in order.[5]

Highlights of the Classified Income Tax Law

Under the Maryland Income Tax Law of 1939, which became effective on April 13th, 1939, the taxes imposed are to be levied annually.[6] The first return and tax payment for those whose accounting period is the calendar year was due on or before March 15th, 1940.[7] At that time the tax was payable on income received or accrued during the calendar year 1939.[8] Those whose taxable year is a fiscal year[9] are required to file returns on or before the fifteenth day of the third month following the close of their fiscal year,[10] and the income taxable to such persons during the

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adoption of a graduated or progressive income tax of an extreme character. The tax we recommend is a uniform income tax, classified as to source of income."

Second, it is contended that no matter how much reasons of expediency may have dictated the adoption of a new form of income tax for the State of Maryland, the 1939 Act, as enacted and enforced, creates such hardships and contains so many ambiguous and discriminatory provisions that it should be either radically modified or repealed in toto. Many of the specific criticisms of the Act are hereinafter discussed.

It is interesting to note that the violent criticisms of the State Income Tax Law of 1939 did not appear, except in isolated instances, until early in 1940 when the taxpayers of the State were first confronted with the filing of returns and the payment of taxes under the Act. At that time massmeetings protesting the Act were held throughout the State, and at least one taxpayers' league (The Taxpayers' Relief Association, Inc.) was founded to fight the tax both in the courts and in the Legislature.

[4] Attorney-General William C. Walsh made statements to this effect in his oral argument before Judge O'Dunne, who presided in the Circuit Court of Baltimore City at the hearing of the consolidated cases of Culver v. Tawes and Oursler v. Tawes, discussed *infra circa* n. 38. These statements were repeated by the Attorney-General in his oral argument before the Court of Appeals. The Rawls Commission on page 3 of its Report said:

"Moreover, the Commission believes that this tax . . . is sound in theory, and, regardless of the needs of the moment must form a permanent part of the tax structure of the State."

[5] See Article in defense of the Maryland Classified Income Tax by H. H. Walker Lewis in the *Evening Sun*, April 30th, 1940. See also statements of the Governor of the State quoted in the *Morning Sun*, March 6th, 1940.

[6] Md. Code (1939) Art 81, Sec. 230.

[7] *Ibid.*, Secs. 233, 245.

[8] Sec. 233 does not use the words "or accrued" during the year 1939, but it is evident from the rest of the Act that a taxpayer whose books are kept on an accrual basis was liable to be taxed on income accrued during the calendar year 1939. See Sec. 226.

[9] Sec. 222 (h).

[10] Sec. 245.

first taxable year was such proportion of the income of the entire fiscal year as the number of days remaining in the fiscal year after January 1st, 1939 bore to three hundred and sixty-five days, with the proviso, however, to the effect that if the taxpayer's records disclosed the exact income for that part of the fiscal year falling in the year 1939, then the portion of the fiscal year's income received or accrued during the calendar year 1939 was taxable.[11] If a taxpayer makes a Federal return his income must be computed for the purpose of the Maryland tax on the same calendar or fiscal year therein shown.[12]

The rate of the tax for individuals, defined in the Act as "all natural persons" and also "all fiduciaries, including corporate fiduciaries and the estates they represent",[13] is 2½% on "ordinary income" and 6% on "investment income".[14] "Ordinary income" is defined by the Act as "that portion of the gross income which is not investment income".[15] "Investment income" is defined by the Act as "that portion of the gross income which is derived from dividends,[16] ground rents,[17] annuity income,[18] and interest,"[19] other than certain allowable business interest exemptions.[20] The rate of the tax for corporations, other than those that are exempted from the provisions of the Act, is 1½% regardless of whether the income is ordinary or investment in character.[21] Corporations are taxable only on such portion of their net income as is allocable to the State of Maryland under special provisions relating to such allocation set forth in the Act.[22] Partnerships as such are not required to pay a tax,[23] but they must file information returns,[24] and the partners are liable for tax on their respective portions of the partnership income in their individual capacities.

All individuals who are either single, or married but separated, are required to file returns where their net in-

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[11] Sec. 233.
[12] Sec. 226(c).
[13] Sec. 222(e).
[14] Sec. 230(a).
[15] Sec. 222(o).
[16] Defined in Sec. 222(j).
[17] Defined in Sec. 222(k)
[18] Defined in Sec. 222(l).
[19] Defined in Sec. 222(m).
[20] Sec. 222(n).
[21] Certain corporations are exempted. See Sec. 230(b).
[22] Sec. 230(b) . See Sec. 253 which defines the income allocable to the State of Maryland.
[23] Sec. 252.
[24] Sec. 238.

come for the taxable year exceeds one thousand dollars or their gross income exceeds five thousand dollars, and those who are married and living with husband or wife must file returns if their combined net income exceeds two thousand dollars or their combined gross income exceeds five thousand dollars. Any individual, or husband and wife living together, whose investment income for the taxable year exceeds two hundred dollars also must file a return. Fiduciaries must file returns where the net income or the gross investment income exceeds two hundred dollars or where the gross income exceeds five thousand dollars.[25] All non-exempt corporations having any income allocable to the State of Maryland must file returns.[26] Non-resident individuals must file returns when they have received income taxable to them under the Act in the same amounts as provided for resident individuals[27]

Personal exemptions are provided for in the Act[28] but these personal exemptions actually amount to tax credits rather than personal exemptions as the words are generally understood. Thus a single person or married person not living with husband or wife receives a tax credit of $25.00; the head of a family or married person living with husband or wife receives a tax credit of $50.00; an additional tax credit of $10.00 is allowed for each person dependent upon and receiving his chief support from the taxpayer if the dependent is under eighteen years of age or is incapable of self-support because mentally or physically defective; a fiduciary receives a tax credit of $5.00.[29]

The Act sets out certain items which shall be excluded from gross income.[30] In addition, the Act provides for the allowance of certain deductions.[31] Much of the criticism of the Act has arisen as a result of the manner in which these deductions are computable where the chief source of the taxpayer's income is investment in character. Whereas Section 224 of the Act states in absolute terms that certain deductions (as therein listed) shall be allowed, by the method of computation of the tax (as provided in Section

[25] Sec. 234.
[26] Sec. 235.
[27] Sec. 234. Except non-resident fiduciaries.
[28] Sec. 228.
[29] Secs. 228 and 230. Actually Sec. 228 lists the exemptions as such, but when the tax is computed as provided for in Sec. 230 the exemptions do not exist but a mere tax credit results. See Sec. 229 for non-resident exemptions.
[30] See Sec. 223.
[31] See Sec. 224. See also Sec. 225 for those items not deductible.

230 of the Act) these deductions are allowed only partially when applied against investment income. In other words, a taxpayer whose income is entirely from investment sources is compelled to pay a tax of 3½% on all deductions that may be granted him absolutely by Section 224 of the Act (since he is allowed to deduct only 2½% of the amount of these deductions, whereas his tax has been computed at a 6% rate). The result of this method of calculation and of the tax credit rather than the exemption system is that as to investment income the tax imposed is gross in nature, rather than net as stated in Section 230 of the Act.[32] Thus, a taxpayer, whose sole income for 1939 consisted of $1,000.00 from ground rents, and who was compelled to pay out $50.00 to collect these rents (deductible under Section 224(m)) and $50.00 in taxes (deductible under Section 224(c)), and who gave away $50.00 to public charities (deductible under Section 224(k)), would be compelled to compute the tax by taking 6% of $1,000.00 and then deducting only 2½% of the $150.00 worth of deductions allowed.

Another provision of the Act which has given rise to much criticism springs from this same method of computation when applied to a trust. Under the Act, a taxpayer, who is the beneficiary of a trust and who has received taxable investment income from that trust, must compute his tax at 6% on the amount of the beneficiary's share of the gross taxable income received by the trustee (not the gross taxable income actually received by the taxpayer).[33] A tax credit, computed at the 2½% rate is allowed the taxpayer on the amount deducted by the trustee for taxes, trustees' commissions, and other administrative expenses. The result of this method of computation is that such a taxpayer is compelled to pay a 3½% tax on that part of the monies received by the trustee and used to defray these expenses of administration, monies in which such a taxpayer has no right, title or interest.[34] There is considerable doubt as to whether this particular feature of the

[32] This particular feature of the Act has been most vehemently denounced by the opponents of the Act. In his argument before Judge O'Dunne, Mr. Arthur Machen (who participated as amicus curiae) stated that if it had not been for the high character of the men composing the Rawls Commission he would have considered the Act to have been "conceived in fraud" and "executed in iniquity". (See oral opinion of Judge O'Dunne, Baltimore Daily Record, March 2, 1940).

[33] See Secs. 230 and 251.

[34] Since most trusts contain express provisions that the income beneficiaries shall not have any right, title or interest in the income from the trust until these expenses are paid.

Act, as applied to non-resident trustees and resident beneficiaries, is constitutional.[35]

The Act contains a further unusual provision. It is stipulated[36] that "no tax imposed under the provisions of this sub-title on any person with respect to ground rent received by him, shall be collected from the lessee by the lessor, and any agreement, express or implied, entered into by a lessor and a lessee providing for the payment of such tax by the lessee shall be void".[37]

Classified Income Tax Constitutional

The validity of the Maryland Classified Income Tax was questioned for the first time in the courts in February, 1940, when two cases (later consolidated) were filed under the Uniform Declaratory Judgments Act[37a] in the Circuit Court of Baltimore City.

In the first of these cases (*Oursler, et al., v. Tawes*), the facts respecting the situation of the taxpayers as set forth in the bill of complaint were that the complainants were husband and wife and had resided in the City of Baltimore during the year 1939; that during said year they had received either jointly or individually income classifiable under the Act as ordinary income in the amount of $1,766.22 (net income from business and rents from dwellings) and income classifiable under the Act as investment income in the amount of $1,762.92 (ground rents and interest from mortgages); and that under the provisions of the Act the complainants were compelled to pay a tax computed at the rate of 2½% on their ordinary income and 6% on their investment income, less a credit of 2½% on their personal exemption of $2,000.00.

In the second of these cases (*Culver v. Tawes*), the bill of complaint set forth that the complainant had been a resident of the City of Baltimore during the year 1939; that during said year he had received income classifiable under the Act as ordinary income in the amount of $1,764.18

[35] See Adams v. Storen, 304 U. S. 307, 82 L. Ed. 1368, 58 S. Ct. 913 (1937). This situation was not directly presented to the Maryland Court of Appeals in the cases hereinafter discussed, but a case involving such a factual situation is now pending before that body, the Circuit Court for Anne Arundel County having held this particular feature of the Act invalid (Williams v. Tawes).

[36] Sec. 230(c).

[37] This survey of certain features of the Maryland Classified Income Tax Act is not intended to be complete, but merely to give the reader a bird'seye view of those features of the Act that have been generally discussed. In comparing the Maryland Income Tax Law with the acts of other States hereinafter, these points will be stressed.

[37a] Chapter 294 of the Acts of 1939, Md. Code (1939) Art. 31 A.

(salary and certain income from fiduciaries) and income classifiable under the Act as investment income in the amount of $4,208.82 (certain income from fiduciaries); and that under the provisions of the Act the complainant was compelled to pay a tax computed at the rate of 2½% on his ordinary income and 6% on his investment income, less a credit of 2½% on his personal exemption of $1,000.00 and 2½% of $1,907.15, representing certain deductions allowed by the Act consisting of a charitable contribution, taxes paid and fiduciary deductions.[38]

In both bills of complaint the taxpayers contended that the Income Tax Act was unconstitutional and void as being repugnant to the 14th Amendment of the Federal Constitution, and to Articles 15 and 23 of the Declaration of Rights of the Maryland Constitution, in that the Act was arbitrary and discriminatory in its classification of property, individuals, corporations and income, in that it provided for the taxing of property and income without the due process of law, and in that it violated the mandate of the people as expressed by the popular vote on the proposed amendment to Article 15 of the Declaration of Rights of the Constitution of Maryland, which would have authorized the General Assembly to have imposed taxes on incomes.

The facts as alleged in the bills of complaint bearing on the status of the complainants as income taxpayers were conceded by the Respondent-Comptroller of the Treasury. It was further stipulated between the parties that one of the ground rents owned by the Complainants-Oursler was created by a lease in which it was provided that the demised premises were to be held by the lessee, its successors and assigns, for the term of 99 years, at an annual rental of $60.00, over and above all deductions for taxes and assessments of every kind levied or assessed, on said premises or the rent issuing therefrom; that this lease contained a covenant on the part of the lessee and its successors to pay the lessor the aforesaid rent, taxes and assessments when legally demandable.

[38] The income from fiduciaries as set out in the bill of complaint did not consist of the actual net income received by Culver from the fiduciaries, but instead, as provided for in the Act, of the total gross income received by the fiduciaries apportionable to Culver under Section 251 of the Act. The result was to tax Culver at the rate of 3½% on $1822.01, which amount was never received as income by Culver and which amount Culver actually had no right to receive as income until his portion of the commissions, taxes and other administrative expenses had been paid. Thus, the bill of complaint shows that Culver was compelled to pay an income tax of $63.77 on monies which he never received.

At the hearing in the lower court on these two consolidated cases, the sole question for decision was whether or not the 1939 Income Tax Law was valid—all facts having been stipulated to by the parties—and so almost the entire hearing[39] (which extended for three days) consisted of arguments by counsel for the parties and the intervenor and by miscellaneous counsel invited to participate in the argument as *amici curiae* by Judge O'Dunne, who presided at the trial. As the greater part of the State revenue program for 1939 and 1940 hinged on the outcome of the case and as the first income tax returns and payments under the Act were due in less than three weeks time, the hearing was well attended both by members of the Bar, irate taxpayers, and members of the general public. Almost every possible constitutional objection to the Act was aired.

On March 1st, 1940, Judge O'Dunne handed down an oral opinion, in which, after extended entertaining remarks in the usual inimitable O'Dunne style,[40] the Court concluded that the presumption was in favor of the constitutionality of the Act, and accordingly ruled that it would uphold the validity of the Act and "let the responsibility for its interpretation rest where it properly belongs, on the Court of Appeals of Maryland."[41]

On June 12th, 1940, the Maryland Court of Appeals handed down an opinion[42] affirming the action of the lower court in sustaining the validity of the State Income Tax

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[39] With the exception of certain preliminary attempts on the part of counsel for an intervenor to have members of the State Legislature testify, which attempts were unsuccessful.

[40] Following are some samples of these remarks:

"The Legislature giveth, the Legislature taketh away. Blessed be the name of the Legislature—no matter what you think of the Legislature as you have seen it on the witness stand in the progress of this trial. . . ."

"Both in the briefs and in arguments runs the reference to the 'poor widow'. . . . The world is not composed of poor widows, nor do they constitute a large part of the Maryland taxpayers! There are, of course, some. But against these, there is a long line of rich widows, 'merry widows' immortalized in song and waltz. There are bewitching widows, inexplicable widows, demure and dangerous widows . . . , gay widows wearing the smiles of triumphant hope over experience. . . ."

"Major Mullen, in his wide travel and long experience at the bar has, in actual captivity, one live specimen of a species of animal now almost extinct, known as a 'rent charge'. It resembles a ground rent as much as a ground hog resembles its shadow, but it is not the same thing." (Opinion of Judge O'Dunne, Baltimore Daily Record, March 2, 1940.)

[41] Opinion of Judge O'Dunne, Baltimore Daily Record, March 2, 1940.

[42] Oursler v. Tawes, 13 A. (2d) 763 (Md. 1940); and Culver v. Tawes, 13 A. (2d) 771 (Md. 1940).

Act (except as to Section 230(c) thereof).[42a] The language of this opinion is exceedingly broad and seems to establish without any doubt one of the major contentions of the State, that no provision of the State Constitution limits the kind of an income tax that may be enacted by the State Legislature (except in as much as Article 23 of the Maryland Declaration of Rights[43] requires conformity with due process of law).

Among the great variety of constitutional objections to the Maryland Income Tax Act urged by counsel for the complainants and others, many were expressly answered by the opinion rendered by the Court of Appeals; others were impliedly answered; some still remain unanswered. The following analysis of some of the most important questions presented and the answers rendered by the Court of Appeals will serve to indicate the scope of this decision:

(1) A primary contention of the Appellee was that the Court had the power to declare the validity or invalidity of the Income Tax Law only as applied to the situations of the taxpayers involved. Conversely, the Appellants contended that under the Uniform Declaratory Judgments Act the entire Income Tax Law was before the Court for review and not merely those sections of the Act affecting the status of the taxpayer-complainants. It was not disputed that the form of the procedure was proper.

The Court of Appeals did not directly decide whether it had the power under the Uniform Declaratory Judgments Act to determine the validity or invalidity of the Income Tax Law as applied to others than the respective parties to the controversy, but it can be argued from the fact that the Court saw fit to hold Section 230(c) of the Act invalid, that the Court reached the conclusion that it did have the power in question. Section 230(c) of the Act provides that no tax imposed on any person with respect to income from ground rents received by him shall be col-

[42a] Section 230(c) reads as follows:

"No tax imposed under the provisions of this sub-title on any person with respect to ground rent received by him, shall be collected from the lessee by the lessor, and any agreement, expressed or implied, entered into by a lessor and a lessee providing for the payment of such tax by the lessee shall be void."

[43] Article 23 of the Maryland Declaration of Rights provides:

"That no man ought to be taken or imprisoned or disseized of his freehold liberties or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the Land."

The term "Law of the Land" as used in this Article has been construed to be synonymous with the expression "due process of law" as used in the Federal Constitution. See NILES, MARYLAND CONSTITUTIONAL LAW, 46.

lected from the lessee by the lessor, and that any agreement entered into between the lessor and the lessee providing for the payment of such tax by the lessee shall be void. Whether or not the Appellants-Oursler, as lessors, are able to collect a certain portion of the income tax they are compelled to pay the State, from their lessees, at first blush does not seem to be a justiciable issue in a controversy between a taxpayer and the State. It is possible to argue from the fact that the Court of Appeals saw fit to declare Section 230(c) of the Act invalid in this controversy between taxpayers and the State that in a proceeding under the Uniform Declaratory Judgments Act to test the validity of a statute, the Court is not confined in its decision to the actual controversy as it applies to the particular parties but is at liberty to approve or reject each and every provision of the statute questioned.[44] On the other hand, it may be that the Court of Appeals, not finding any constitutional justification for a restriction of this nature, simply gave vent to its feelings in the form of a dictum.

(2) A further contention of the Appellee was that the Maryland Legislature has an inherent power to impose a tax on incomes and that the only limitation on this power is such as exists under the due process clause of the Maryland Constitution and the due process and equal protection clauses of the Federal Constitution.[45] As opposed to this contention the Appellants urged the view that Article 15 of the Maryland Declaration of Rights was a constitutional restriction upon the power of the Maryland Legislature to impose a tax on incomes.[46] The argument of the Appel-

[44] This would seem to be contrary to the decisions of other states under the Uniform Declaratory Judgments Act. See Annotations in 12 A. L. R. 52, 19 A. L. R. 1124, 50 A. L. R. 42, 68 A. L. R. 110, and 87 A. L. R. 1205.

[45] Page 18, Appellee's Brief. The "due process" clauses of the Federal Constitution are the 5th and 14th Amendments to that Constitution. The "equal protection" clause is contained in the 14th Amendment. The "due process" clause of the Maryland Constitution is Article 23 of the Declaration of Rights. See *supra*, n. 43.

[46] Page 30, Appellants' Brief. Article 15 of the Maryland Declaration of Rights provides:

> "That the levying of taxes by the poll is grievous and oppressive and ought to be prohibited; that paupers ought not to be assessed for the support of the government; that the General Assembly shall, by uniform rules, provide for separate assessment of land and classification and sub-classification of improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the counties and by the City of Baltimore for their respective purposes, shall be uniform as to land within the taxing district and uniform within the class or sub-class of improvements on land and personal property which the respective taxing powers may

lants was based on the theory that "an income tax law of whatever kind . . . is a tax on property or 'an individual according to his property' "[47] and accordingly that any income tax law "must comply with that portion of Section 15 dealing with taxes upon real and personal property". As an alternative theory, Appellants argued that even if income is not property within the meaning of Article 15 of the Maryland Declaration of Rights, still, "the tax proposed to be levied is embraced by the last clause of the 15th Article, and, as a fine, duty or tax of another kind, must be properly and justly laid, 'which is equivalent to saying they must be uniform' ".[48]

The Court of Appeals, in discussing the principles underlying State constitutional limitations, concluded that independent of the limitations placed upon it by the Federal Constitution, the right to tax is inherent in a State, that this right underlies the Constitution of the State and is not granted by it, and that accordingly unless the State Constitution prohibits the enactment of a particular form of tax, the Legislature has the power to enact such a form.[49]

In determining its stand on the question of the application of Article 15 of the Maryland Declaration of Rights to various forms of tax, the Court of Appeals relied on a lengthy quotation from Niles on Constitutional Law, the summarized conclusions of which are: that the last clause of the 15th Article enlarges the taxing power of the Legislature, and that taxes laid under this enlargement of the power are not property taxes, but are such taxes as are levied upon occupations, privileges, contracts and things of that nature; that as to such taxes the rule of equality does not apply; that as to property taxes the Legislature is prohibited from taxing the same individual twice in regard to the same piece of property, but as to the second class of taxes there is no limitation laid upon the power of the Legislature by Article 15, except that such taxes are not to be laid upon property as such.

Having thus concluded that the Legislature has the inherent power to levy an income tax unless expressly pro-

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have directed to be subjected to the tax levy; yet fines, duties or taxes may properly and justly be imposed, or laid, with a political view for the good government and benefit of the community."

[47] Page 39, Appellants' Brief.

[48] Page 51, Appellants' Brief.

[49] The Opinion proceeds with a discussion of the three constitutional limitations upon the State Legislature: the first, the due process and equal protection clauses of the Federal Constitution; the second, Article 23 of the Maryland Declaration of Rights; and the third, Article 15 of the Maryland Declaration of Rights.

hibited from so doing by the Maryland Constitution and that the 15th Article of the Maryland Declaration of Rights does not place such limitation upon this inherent power, unless the form of income tax is such as to compel the conclusion that the tax is a property tax, the Court of Appeals is then confronted with the core of the problem,—whether the classified form of income tax, imposed on gross income in certain instances, is a property tax.

The Court recognizes that there is a wide division of opinion among the States of the Union as to whether State income taxes are to be regarded as property taxes, and that, though the decisions of appellate courts of other jurisdictions are helpful in reaching a conclusion in this case, they are in no way controlling.[50]

The opinion of the Court of Appeals does not expressly align Maryland with either of these two conflicting views, but, when the Court says: "Giving due force to the indicated inherent power of the Legislature as limited by constitutional provisions, both Federal and State, to which we have referred, it is our conclusion that the enactment of Chapter 277 was a valid and constitutional exercise of legislative authority", it in fact decides either that an income tax is not a property tax or else that under Article 15 of the Maryland Declaration of Rights, as amended by the Act of 1914, Chapter 390, taxes on property are required only to be uniform within the classification, and that the income taxes levied by Chapter 277 of the Acts of 1939 meet with this requirement. The quotation from Niles on Maryland Constitutional Law, hereinbefore referred to,[51] tends to show that the Court of Appeals intended to adopt the former of these two conclusions.

(3) The Appellants contended "that the Maryland State Income Tax is so unreasonable and arbitrary in its classifications and separate rate schedules, as not to comply with the essential requirements"[52] of the due process and equal protection clauses of the Federal and State Constitutions.[53] The Appellee contended that all classifications made by the Act are reasonable within the constitutional sense.

[50] The following states have held income to be property for purposes of their respective constitutions: Alabama, California, Delaware, Illinois, Massachusetts, Oregon, Pennsylvania, Washington. Those states holding income not to be property for purposes of their constitutions are: Arkansas, Georgia, Indiana, Kentucky, Maine, Mississippi, Missouri, Montana, New Hampshire, North Carolina, and South Carolina. A leading decision of the Supreme Court of interest in this connection is that of Pollack v. Farmers' Loan & Trust Co., 156 U. S. 601, 39 L. Ed. 601 (1895).

[51] *Supra circa* n. 49 ff.

[52] Pages 58-59, Appellants' Brief.

[53] See *supra*, n. 45.

The opinion does not treat specifically the many detailed objections raised by the Appellants as examples of the unreasonableness of the classifications made in the Act, but instead discusses these objections only in a generalized way:

> "Abstract comparisons in the application of the many and varied provisions of the Act are urged by the appellants as establishing inequities in its practical effect. In some cases, it is submitted that sources of income accruing from property of one classification, are subjected to a greater tax burden than are sources of income derived from property pertaining to another and separate classification. . . . This situation, however, arises not as between taxpayers whose sources of income or situations are similar in that they accrue from property of like classification under the Act; but arises in cases where the sources of income accrue from property of separate and distinct classifications under the Act. In other words a taxpayer whose various sources of income accrue from property separately classified, is subject to the same tax burdens, exemptions and immunities under the law, as are incident, respectively to the several property classifications from which his total income accrues.

The opinion concludes this particular phase of the problem by upholding the unequal exemptions set up by the Act:

> "Nor are criticisms leveled at the inequality of various exemptions allowable, based as they appear to be upon the various sources of income and situations of the respective objects of the tax, in our opinion well directed. To the contrary it seems too firmly established to admit of discussion, that the Legislature has the power to exempt from taxation any person, corporation, or class of property according to its views of public policy or expediency, provided always that no constitutional provisions are violated. . . ."[54]

Thus the Court of Appeals expressly approves all classifications and exemptions made by the Income Tax Law without discussing directly any of the alleged arbitrary and discriminatory classifications, except in this most general way. The theory of the Court of Appeals, as contained

[54] Citing Jefferson Branch Bank v. Skelly, 66 U. S. 436, 17 L. Ed. 173 (1861), and Williams-Wilkins Co. v. Baltimore, 103 Md. 293, 63 A. 562 (1906).

in the quotation from *Carmichael, etc., v. Southern Coal and Coke Co.,*[54a] is evidently to the effect that in the absence of a showing that the action of the Legislature was capricious the courts must presume that the legislation in question is constitutional, and that without such a showing the presumption is conclusive. Implicit in this express but general approval of all classifications and exemptions made by the Act is the conclusion that it was reasonable for the Legislature to place income from dividends, ground rents, annuity income, and interest in a different category from rents other than ground rents, income from patents and copyrights in the hands of an assignee, and income of a special partner in a limited partnership.[55]

(4) It was vigorously contended by Appellants that the method imposed by Section 230 of the Act in taxing gross

[54a] 301 U. S. 495, 81 L. Ed. 1245 (1937).

[55] The critics of the Maryland Act contend that it is most unfair to tax one class of unearned income at the 6% rate and another class at the 2½% rate. They reason that, if it is necessary to have two categories, all income of the unearned character should be in the "investment" category.

In answer to this contention those favoring the placing of the ground rent income in the "investment" class justify their action on several grounds: first, they argue that since mortgage interest was placed in this category, it would be unfair to the holders of mortgages to place a higher tax on the income from that type of security than on income from ground rents; second, they argue that ground rents, as well as the ground from which they were derived, escaped taxation to the owners thereof under the old system of taxation, whereas ordinary rents and the property from which they were derived, were taxed through the real property assessments and in order to equalize the tax burden, ground rents should be surtaxed; third, they argue that ground rents resemble in many ways bonds and preferred stock, and that since such intangible securities are surtaxed, ground rents should be surtaxed.

The opponents of the present classification in reply argue that the result of surtaxing ground rent income is not to equalize the tax burden but to discriminate against the ground rent owner:

First, this group contends that there is no justification for making the distinction between the rate of tax on ground rent income and the rate of tax on income from ordinary rents. They argue that it is a fallacy to conclude that the ground from which the rent is issuing is not taxed simply because the owner of the land has made a contract with the lessee of the land in which the latter has agreed to pay all taxes due on the land,—that the lessee simply pays these taxes for the lessor. The result, they contend, is to tax the ground rent owner in three ways (property tax on the land, 2½% tax on the income, and 3½% surtax on the income), whereas the ordinary rent owner is taxed only twice (property tax and 2½% income tax). Second, this group contends that there is no justification for placing ground rents in the same category as income from intangible securities, that there is little resemblance between a ground rent and a bond or preferred stock certificate. They point out that under the old system of taxation, intangibles were taxed as property, but that under the 1939 Income Tax Law this property tax was lifted and the 3½% income surtax was placed on the income derived from the intangible securities to replace the old property tax. The result, they argue, was, again to discriminate against the ground rent owner, since the property tax against him was not removed and both the ordinary 2½% income tax and the 3½% income surtax were placed on him.

income is particularly objectionable and results, where the income is investment in character, in an obnoxious form of double taxation. The Appellee contended that the tax was not a gross income tax, even as to investment income.[56] The Court of Appeals did not discuss this objection to the Act.

The theory pursued by Appellants was that although a tax measured by net income may be an equitable method of distributing the burdens of State Government among those privileged to enjoy its benefits, a tax on gross income finds no support in the economic reasons which sustain income taxes;[57] that such a tax does not indicate the possession of sufficient funds with which to pay the tax and may result in the levy of an income tax against persons who have no net income.[58] Apparently the Court of Appeals chose to ignore this contention completely in its opinion.[59]

(5) Although it was argued by the Appellants that Section 230(c) of the Act, which provides that no tax imposed on any person with respect to income from ground rents received by him shall be collected from the lessee by the lessor and that no agreement to the contrary shall be valid, was unconstitutional as having the effect of impairing the obligation of contract and accordingly in conflict with Arti-

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[56] There is little basis for this contention of Appellee. Section 230 of the Act taxes all investment income (all income not excluded as income by definition) at 6%. Then a credit of 2½% on all proper deductions is allowed. The result is that a 3½% tax is imposed on the deductions (supposedly allowed absolutely by Section 224 of the Act). As "taxes paid" is among the items deductible, it follows that the investment income taxpayer must pay 3½% on all other taxes paid. As applied to the income beneficiary of a trust, this particular feature of the Act is most objectionable. See *supra circa notes* 29-37.

[57] See Redfield v. Fisher, 135 Ore. 180, 292 P. 813 (1930), where it was declared that the fact that the tax there questioned was a gross income tax was persuasive evidence that it was not an income tax at all but a property tax.

[58] Mr. Randolph L. Cockey, President of The Taxpayers' Relief Association, Inc., reports that several such cases have been brought to his attention. One of a particularly trying nature, he gives the facts of as follows: Mr. A., an elderly single gentleman, received total income in 1939 of $1500, all from ground rents and securities. During that same taxable period, Mr. A's business showed a net loss of $1600, the result being that Mr. A showed a net loss for the year of $100. Under the Income Tax Act Mr. A's investment income would be taxed at 6% (tax would thus be $90); Mr. A would be allowed to deduct 2½% of $1600, or $40, and in addition would be allowed a tax credit of $25; the result would be that Mr. A paid a tax of $25 when in fact during 1939 Mr. A lost $100.

[59] Taxes on gross receipts have been sustained. See Jones v. Gordy, 169 Md. 173, 180 A. 272 (1935). The Indiana gross income tax has also been upheld as to income actually reaching Indiana. But see Adams v. Storen, 304 U. S. 307, 82 L. Ed. 1368, 58 S. Ct. 913 (1937).

cle 1, Section 10 of the Constitution of the United States, this point was not stressed either below or on appeal.[60] The Appellee contended that this Section could be construed as applicable only to such contracts as were entered into after the effective date of the Act and that as to these contracts the Section was constitutional.

The opinion of the Court of Appeals states in terse language that the effect of this Section is to impair the obligation of contract, and that accordingly the Section is in conflict with Article 1, Section 10 of the United States Constitution.[61] The point made by Appellee is not discussed.

Comparison of the More Generally Discussed Features of the Maryland Classified Income Tax Act with Income Tax Statutes of Other States

It has been contended by many of the critics of the Maryland Income Tax Act that no other state has an income statute even remotely resembling the Maryland Act. How unique in the field of income taxation is this Classified Income Tax?

Prior to the depression years few states levied general personal (as distinguished from corporate) income taxes, but at the present time the state income tax is no longer an oddity: thirty-two states and the District of Columbia now have some form of general personal income tax.[62]

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[60] It was not considered to be of importance in a controversy between a taxpayer and the State.

[61] The rule is that when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other it would be valid, it is the plain duty of the court to adopt that construction which will save the statute from constitutional infirmity. See WILLOUGHBY, THE CONSTITUTION OF THE UNITED STATES, 34.

[62] Included are (the dates listed after the states in parenthesis are those dates on which the present form of income tax was enacted, prior forms of income taxes having existed in many cases); Alabama (1935), Arizona (1933), Arkansas (1937), California (1935), Colorado (1937), Delaware (1929), District of Columbia (1939), Georgia (1933), Idaho (1932), Indiana (1933), Iowa (1935), Kansas (1933), Kentucky (1936), Louisiana (1934), Maryland (1939) Massachusetts (1916), Minnesota (1933), Mississippi (1934), Missouri (1929), Montana (1933), New Mexico (1933), New York (1919), North Carolina (1939), North Dakota (1913), Oklahoma (1935), Oregon (1930), South Carolina (1932), South Dakota (1939), Utah (1933) Vermont (1933) Virginia (1926), West Virginia (1935), Wisconsin (1935). In addition, two states, New Hampshire (1923) and Tennessee (1931), have income taxes of a special character. New Hampshire levies a tax on income in the form of interest and dividends at the same rate as is levied upon other property throughout the state. Tennessee levies a tax on the income in the form of interest and dividends at the rate of 6% (unless 75% of the property of the corporation paying the interest or dividend is taxable in Tennessee, in which event

The great majority of these states have adopted the graduated form of tax as opposed to the classified-as-to-source or flat forms, with respect to individuals. Only three states have adopted a general personal income tax of the classified variety, and only one state has adopted a general personal income tax of the flat character.[63] However, the majority of states impose income taxes on corporations at flat rates.[64]

In those twenty-eight states and the District of Columbia, which impose a graduated personal income tax, the graduations range from 1% to 15%,[65] but few states use the same scale of graduations or even have the same minimum and maximum rates. The flat rates on corporate incomes range from 2% to 7%.[66] In addition to those four

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the rate is only 4%). In 1931 a general income tax of a graduated character was passed in Tennessee but it was held unconstitutional (Evans v. McCabe, 164 Tenn. 672, 52 S. W. (2d) 159 (1932)).

[63] Twenty-eight states and the District of Columbia have adopted the graduated form of tax for individuals. Following is a list of those states with graduated income taxes and the amount of the graduations: Alabama (1½% to 5%), Arizona (1% to 5%), Arkansas (1% to 5%), California (1% to 15%), Colorado (1% to 6%, plus an additional flat surtax on dividends and interest), Delaware (1% to 3%), District of Columbia (1% to 3%), Georgia (1% to 7%), Idaho (1½% to 8%), Kansas (1% to 4%), Kentucky (2% to 5%), Louisiana (2% to 6%), Minnesota (1% to 10%), Mississippi (3% to 8%), Missouri (1% to 4%), Montana (1% to 4%), New Mexico (1% to 4%), New York (2% to 7%, plus an additional 1% flat emergency tax for 1940; different graduated scale for capital gains), North Carolina (3% to 7%), North Dakota (1% to 15%), Oklahoma (1% to 9%), Oregon (2% to 7%, plus an additional flat surtax on interest and dividends), South Carolina (2% to 5%, plus an additional graduated surtax on interest and dividends), South Dakota (1% to 8%), Utah (1% to 5%), Virginia (1½% to 3%), West Virginia (1% to 4%), Wisconsin (1% to 7%, plus an additional surtax for 1940).

Three states have adopted the classified-as-to-source form of tax: Indiana (the rates vary from ¼% to 1%; see Note 67, *infra*); Maryland (the rates vary from 2½% to 6%; see page 2, *supra*); and Massachusetts (the rates vary from 1½% to 6%; see Note 67, *infra*).

One state, Vermont, has adopted a flat income tax (2%), subject, however, to an additional surtax on interest and dividends (see Note 67, *infra*).

[64] Twenty-three states and the District of Columbia levy flat income taxes on corporations: Alabama (3%), Arkansas (2%), California (4%), Colorado (4%), District of Columbia (5%), Georgia (5½%), Iowa (2%), Kansas (2%), Kentucky (4%), Louisiana (4%), Maryland (1½%), Massachusetts (2½%), Minnesota (6%), Missouri (2%), Montana (3%, with a $5 minimum), New Mexico (2%), North Carolina (6%), Oklahoma (6%), Oregon (8%, with a $10 minimum), South Carolina (4½%), Tennessee (3.75%), Utah (3%), Virginia (3%). The above percentage figures denote the rate of tax taken from the latest reports, but since these rates are constantly fluctuating, the rates given above may not all be accurate. In addition these rates do not take into account the credits given in certain instances by the various states for one reason or another. Only three states have graduated corporation income taxes: Arizona (1%-5½%), North Dakota (3%-6%), and Wisconsin (2%-6%).

[65] See *supra* n. 63.

[66] See *supra* n. 64.

states which do not graduate the rates on individual incomes,[67] there are two states which levy a special income tax on income in the form of interest and dividends.[68]

In all states where the net income tax is general in character personal exemptions are allowed. The most common amounts are $800 to $1000 for single persons or married persons not living with spouse[69] and $2000 to $2500 for heads of families or married persons living with spouse.[70] Some states permit a deduction after the tax has

[67] *Indiana* imposes a classified gross income tax, the rates of which vary depending upon the source of the income (this tax has so many more characteristics of a gross receipts tax than an income tax that it is usually classified by text-book writers in that category rather than as an income tax): (1) Display advertising at ¼%; (2) Wholesalers and jobbers at ¼%; (3) Retailers at 1%; (4) Public Utilities and Banks at 1%; and (5) All other income at 1%.

Maryland is discussed herein.

Massachusetts imposes a classified income tax, the rates of which vary depending upon the source of the income: (1) Interest and dividends at 6%; (2) Annuity Income at 1½%; (3) Excess of gains over losses from the sale of intangible personal property at 3%; and (4) Business income over $2000 at 1½%. For exemptions as to classes (1), (2), and (3), see notes 69 and 70, *infra*.

Vermont imposes a flat 2% rate on all income and adds a flat 4% surtax on income from stocks, bonds and annuities.

[68] See *supra* n. 62. Neither New Hampshire nor Tennessee levy an ad valorem tax on intangible securities.

[69] For single persons or married persons not living with spouse following are the personal exemptions (or equivalent tax credits) allowed by the various states:

One state allows $2000 exemption: Massachusetts (but as to interest, dividends, annuity income and excess of gains over losses in the sale of intangible personal property only $1000 exemption is allowed, and this only if the entire income of the taxpayer is less than $1000).

Twenty states and the District of Columbia allow $1000 exemption: Arizona (tax credit equivalent to), California, Colorado (2% surtax on certain forms of investment income without this personal exemption), Delaware, Georgia, Indiana, Iowa (tax credit equivalent to), Kentucky, Louisiana, Maryland (tax credit equivalent to, but not as to all forms of income), Minnesota (tax credit equivalent to), Mississippi, Missouri, Montana, New York, North Carolina, South Carolina (only $500 personal exemption on income in the form of interest and dividends), Vermont (only $400 personal exemption on income in the form of interest and dividends), Virginia, and West Virginia.

One state allows $850 exemption: Oklahoma. Two states allow $800 exemption: Oregon (only $500 personal exemption on income in the form of interest and dividends) and Wisconsin. One state allows $750 exemption: Kansas. One state allows $700 exemption: Idaho. Two states allow $600 exemption: South Dakota (tax credit equivalent to) and Utah. One state allows $500 exemption: North Dakota.

In Tennessee and New Hampshire the tax is not general in nature but is only on income in the form of interest and dividends. In New Hampshire a $200 exemption per person is allowed.

[70] For heads of families or married persons living with spouse following are the personal exemptions (or equivalent tax credits) allowed by the various states:

Two states allow $3000 exemption: Alabama and Minnesota (tax credit equivalent to).

Eleven states allow $2500 exemption: Arkansas, California, Colorado (2% surtax on certain forms of investment income without exemptions), been computed (a tax credit) in lieu of these exemptions. For dependents an additional $300 to $400 exemption is customary.[71]

There is considerable uniformity among the income tax statutes of the various states in respect to what constitutes taxable income. As to residents, the tax is usually levied upon their entire net income, regardless of source; as to non-residents, the tax is usually levied upon that part of their net incomes received from property owned or business carried on in the state. As to corporations, the tax is usually levied upon the entire net income, if domestic, and upon the net income arising from property situated, and business done, in the state, if foreign. "Net income" is uniformly defined as "gross income" of the taxpayer less the deductions allowed. However, the items includable in "gross income" and the items deductible vary to a limited extent in the various states. Thus, almost all states exclude the following from "gross income": (1) the proceeds of life insurance policies paid by reason of the death of the insured, (2) amounts received under life insurance or endowment contracts as a return of capital, (3) the value

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District of Columbia, Georgia, Kentucky, Louisiana, Massachusetts (but as to interest, dividends, annuity income and excess of gains over losses in the sale of intangible personal property, only $1500 exemption is allowed, and this only if the entire income of taxpayers is less than $1500), Mississippi, New Mexico, and New York.

Eleven states allow $2000 exemption: Arizona (tax credit equivalent to), Delaware, Indiana, Iowa, Maryland (tax credit equivalent to but only as to ordinary income), Missouri, Montana, North Carolina, Vermont (only $400 per person exemption on income in the form of interest and dividends), Virginia and West Virginia.

One state allows $1800 exemption: South Carolina (only $500 per person exemption on income in the form of interest and dividends).

One state allows $1750 exemption: Wisconsin (tax credit equivalent to). One state allows $1700 exemption: Oklahoma. Four states allow $1500 exemption: Idaho, Kansas, North Dakota and Oregon (only $500 per person exemption on income in the form of interest and dividends).

Two states allow $1200 exemption: South Dakota (tax credit equivalent to) and Utah. See *supra* n. 69, as to Tennessee and New Hampshire.

[71] For dependents following are the personal exemptions (or equivalent tax credits) allowed by the various states:

Two states allow $500 exemption: Iowa (tax credit equivalent to) and Minnesota (tax credit equivalent to).

Thirteen states allow $500 exemption: Alabama, Arizona (tax credit equivalent to), Arkansas, California, Colorado (2% surtax on certain forms of investment income without exemptions), District of Columbia, Georgia, Kentucky, Louisiana, Maryland (tax credit exquivalent to but only as to ordinary income), Mississippi, New York, and Wisconsin.

Five states allow $300 exemption: Montana, Oklahoma, Oregon (not as to income in the form of interest and dividends), Utah and West Virginia. Two states allow $250 exemption: Massachusetts and Vermont.

Ten states allow $200 exemption: Delaware, Idaho, Kansas, Missouri, New Mexico, North Carolina, North Dakota, South Carolina (not as to income in the form of interest and dividends), South Dakota and Virginia. See *supra* n. 69, as to Tennessee, New Hampshire and Indiana.

of property acquired by gift, bequest, devise, inheritance or succession, (4) amounts received through accident or health insurance, (5) amounts received under Workmen's Compensation or Employers' Liability Acts, (6) amounts received by way of damages for personal injuries or property damage, (7) income which the state is prohibited from taxing under the Constitution of the United States, and (8) interest upon the obligations of the State or its political subdivisions.

It is uniformly recognized that certain deductions from gross income (as defined by the various Acts) should be allowed. Almost all states taxing net income in general and not merely income from certain specific sources include the following items among the deductions allowable: (1) all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, (2) all interest paid or accrued during the taxable year, (3) taxes paid or accrued during the taxable year, except against local benefits of a permanent nature, estate, inheritance, succession, and gift taxes, (4) debts ascertained to be worthless and charged off during the taxable year, (5) reasonable amounts for depreciation and depletion, and (6) charitable contributions (generally limited as to donees and as to amount).

The vast majority of the state income taxes are based on the net taxable income received by the taxpayer. Of course, since "net income" and "gross income" are simply what they are defined to be by the various statutes, it is sometimes difficult to determine whether a tax is net or gross, as the terms are generally understood. However, there is only one general income tax of a "gross" character among the state income tax laws, and that tax resembles a sales tax more than it does an income tax.[72] On the other hand, several states do have general income taxes which are gross as to income from a particular source. Thus, Colorado levies a surtax of 2% on income in the form of dividends from corporate stock, royalties, interest from money, notes, credits, bonds and other securities, and none of the deductions or personal exemptions allowed as to general income apply as to this surtax income.[73] Sev-

[72] Indiana. Provision is made for the filing of quarterly reports, unless the amount of the tax is under $10. The rates of the tax vary as to source of income. There are, however, personal exemptions allowed by the Act. See *supra* n. 67.

[73] Oregon and Vermont also place a surtax on income from certain intangibles, which is gross in character. The Maryland Classified Income Tax is gross in respect to investment income. See *supra circa* n. 55 ff.

eral states which do not have a general income tax, but which do have a tax on income received from certain intangibles do not allow any deductions and are accordingly "gross" in nature.[74]

Conclusion

From this survey of the income taxes of other states as compared with the Maryland Classified Income Tax certain conclusions may be reached concerning the Maryland levy:

(1) The amounts of the tax exacted by the Maryland Act from the pocket of the taxpayer in the low income brackets are much larger than those exacted in the vast majority of the states. This is true both as to "ordinary income"[75] and as to "investment income",[76] and is due largely to the fact that almost all states outside of Maryland have a graduated form of tax, and the so-called "little man" under such tax is not hit so hard.

(2) The personal exemptions allowed by the Maryland Act are about average as applied to "ordinary income",[77] but are considerably below average when applied to "investment income",[78] particularly in the ground rent income class.[79]

(3) The gross income tax feature of the Maryland Act, though not without some precedent in other states, is almost unique in the manner of its application under a general income tax statute.[80]

(4) Certain classifications under the Maryland Act result in the placing of unreasonable tax burdens on certain

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[74] Tennessee levies a 6% tax on income in the form of dividends and interest (4% where 75% of the property of the corporation paying the dividend or interest is taxable in Tennessee). There are certain exclusions but no deductions and personal exemptions. The tax is in effect an intangible property tax. New Hampshire levies a similar tax, but $200 of such income is exempt.

[75] In only two states, Mississippi and North Carolina, is the minimum rate of tax for ordinary income (as defined in the Maryland Act) over 2%.

[76] As to interest and dividends, some states which levy a general income tax, notably Colorado, Oregon, South Carolina and Vermont, exact a rather large amount of tax from the taxpayer in the low income tax brackets, but in no case does it seem to be as great as is exacted by the Maryland Act. It is interesting to note that in Massachusetts, one of the earliest states to adopt a classified income tax, an exemption of $1000 is allowed the recipient of this form of income. See *supra* notes 69-70.

As the Maryland type of ground rent is almost unique, a comparison of the Maryland 6% tax on ground rent income with income taxes of other states would be of little use. See *supra*, n. 55.

[77] See *supra* notes 69, 70 and 71.

[78] See *supra* notes 69, 70, 71 and 76.

[79] See *Ibid.*

[80] See *supra* notes 67 and 72.

forms of income of the same general class as other forms of income on which such unreasonable burdens are not placed. It is submitted that a particularly glaring example of this is found in the classification of ground rent income as "investment income" and of ordinary rent from real estate as "ordinary income".[81]

(5) The Maryland Act is in the form of the classified variety which, though not a form untried in other jurisdictions, is nevertheless comparatively seldom found, largely due to the fact that it is generally felt that the graduated net income tax is more closely geared to ability to pay than the classified income tax.[82]

The conclusion is inescapable from a study of income tax laws of other states that, generally speaking, the Maryland Act is not in harmony with other state income tax statutes. Most income taxes are levied on the theory that those best able to contribute to the support of the government should be those most heavily taxed. The powers responsible for the Maryland Act seem to have lost sight of this cardinal principle of income taxation in their effort to discard the intangible property tax and "soak" the ground rent owner. It is submitted that radical modifications of the Maryland Act along the lines suggested are in order.[83]

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[81] See *supra* n. 55.

[82] See *supra circa* n. 55 ff.

[83] The Tax Revision Commission of 1939 is scheduled to file a report with the Governor on or before December 1st, 1940, recommending modifications in the Act.